SUPREME COURT OF THE UNITED STATES.

No. 149.

THE UNITED STATES, PLAINTIFFS,

vs.

JAMES AND JOHN G. DANIEL, EX'TORS OF BEVERLY DANIEL, LATE U. S. MARSHAL, &c.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF NORTH CAROLINA.

UNITED STATES OF AMERICA,
District of North Carolina, Circuit Court:

Be it remembered that heretofore, to wit, on the twelfth day of November, in the year one thousand eight hundred and forty-one, being the first day of November term, 1841, Wesley Jones, esquire, returned into court a writ in words as follows:

UNITED STATES OF AMERICA,
North Carolina District, Fifth Circuit:

The President of the United States of America to the marshal of North Carolina district, greeting:

You are hereby commanded to summon James Daniel and John G. Daniel, executors of Beverly Daniel, dec'd, late marshal, if to be found in your district, and them safely keep, so that you have them before the judges of our circuit court, at the next court to be held for the district aforesaid, at Raleigh, on the 12th day of November next, then and there to answer the United States of America of a plea of trespass on the case, to their damage one thousand dollars. Herein fail not, and have you then and there this writ.

Witness, Peter V. Daniel, esquire, associate justice of the United States, at Raleigh, the 12th day of May, A. D. 1841, and in the 64th year of the independence of the United States.

WM. H. HAYWOOD, *Clerk.*

Issued 23d day of August, A. D. 1841.

Endorsed, to wit:
Not to be found; believed to reside in the State of Virginia.

WESLEY JONES, *Marshal.*

J. & G. S. GIDEON, printers.

Whereupon the defendants, James Daniel and John G. Daniel, appeared by their counsel, George E. Badger, and entered and plead, to wit:

Defendants admit service of the process, and consent to plead now, to be tried at the next term. Therefore, they plead general issue, with leave to add.

Wherefore and whereupon this cause was continued from term to term, until May term, 1843.

Whereupon, at May term, 1843, the honorable Henry Potter, district judge of *of* the United States for the district of North Carolina, presiding, came the parties, as well the United States as the defendants, by their counsel.

THE UNITED STATES against JAMES DANIEL and JOHN G. DANIEL, executors of Beverly Daniel, deceased.	Gen'l issue, with leave to add.

When the following jury of good and lawful men were sworn to try the issues, to wit: Henry J. G. Ruffin, George W. Thompson, Meredith Crows, John B. Johns, David Clegg, Needham Price, Jacob H. Cooley, John E. Twitty, John C. Williams, Simon Smith, John Elliott, and D. Johnston, who find all the issues in favor of the plaintiff, and assess the damage to seven hundred and seventy-five dollars and eighty cents, and costs.

A verdict in this case is taken by consent of the parties, subject to the opinion of the court on the following case reserved:

Beverly Daniel, being in his lifetime marshal of the district of North Carolina, certain executions, at the instance of the United States, from the district court of Newbern, came to the hands of one of the deputies of the said marshal, who, in the name and on behalf of his principal, made false returns upon some of them, and imperfect and insufficient entries on others. After the death of Daniel, this action on the case was brought against the defendants, his executors, to recover damages for the said false and insufficient returns; and it is contended, on the part of the defendants, that the action will not lie, and is not sustainable against them as executors, and it is agreed by the parties that judgment shall be rendered for the plaintiffs upon the said verdict, if the court shall be of opinion that such action is sustainable, otherwise the said verdict to be set aside, and the said action to be discontinued.

G. E. BADGER, *for Defendants.*
D. K. McRAE, *for United States.*
By W. H. HAYWOOD, *late U. S. Atto.*

Upon this case, the plaintiffs move for judgment against the defendants, which motion is adjourned to the next term.

And now, at this term, to wit, the second Monday of December, A. D. 1843, the honorable James M. Wayne and Henry Potter, judges of the court, the question upon the said case reserved coming on to be considered, the opinions of the said judges were opposed upon the point arising thereon; and therefore, on motion of the counsel for the United States, it is ordered, that the same, as stated in the said case reserved, be certified to the Supreme Court, according to the statute in such cases provided.

JAMES M. WAYNE,
H. POTTER, *Judge U. S. Dist. N. C.*

UNITED STATES OF AMERICA,
District of North Carolina:

I, William H. Haywood, clerk of the circuit court of the United States for the district aforesaid, do hereby certify the foregoing to be a copy of the proceedings in the case—The United States against James Daniel and John G. Daniel, executors of Beverly Daniel, deceased.

[SEAL.] Given under my hand and seal of office, at office, this 18th day of January, A. D. 1844.

W. H. HAYWOOD, *Clerk*.